VOLUME – 1

PART-A

SECTION – III

GENERAL CONDITIONS OF CONTRACT (GCC)

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1. DEFINITION OF TERMS.

1.1 In these general conditions, the following expressions shall be the meanings herein assigned to them, unless there is something in the subject or context inconsistent with such meaning.

1.2 **"BMRCL or Employer or Company or Purchaser"** shall mean the **"BANGALORE METRO RAIL CORPORATION LIMITED"**, which has jurisdiction over the area of works, and its successor if any.

1.3 **"Division"** shall refer to the respective office of BMRCL directly in charge of the works.

1.4 **"Contractor"** shall mean the successful Tenderer whether a firm, registered company, partnership or an individual, whose Tender has been accepted by BMRCL or by the Officer duly authorized on behalf of BMRCL, and who has entered into agreement with BMRCL for due fulfillment of the Contract and shall also include legal representatives, successors and assignees of the Tenders.

1.5 **"Engineer"** means the Officer of BMRCL in charge of the works or such other officer who may be appointed to act as the Engineer for the purpose of this Contract and shall also include the Chief Engineer/ Deputy Chief Engineer / Executive Engineer/ Assistant Executive Engineers or Officers of equivalent rank, directly in charge of the work authorized by BMRCL. The Contractor shall have the right of appeal against the orders of a lower ranked authority to the higher ranked authority of BMRCL whose decision shall be final and legally binding on all parties concerned.

1.6 **"Engineer–in-charge"** shall mean the Engineer of the concerned jurisdiction or his duly authorized officers.

1.7 **"Plant"** shall mean and include any or all plant, machinery, tools or other implements of all description necessary for the execution of the work in safe and workman like manner.

1.8 **"Work or Works"** shall mean the work or works set out and described in the Schedule of prices, drawings and specifications and which the Contractor has agreed to execute under the terms of Contract. It shall include all items of work, which unless specially excluded are necessary to execute the work as described.

1.9 **"Contract and Contract documents"** shall mean and include the Instructions to Tenderers, General conditions of Contract, Special conditions, Specifications, Schedule of Prices, drawings and the stamped agreement.

1.10 **"Specifications"** shall mean the specifications annexed and such other specifications and the Schedule of drawings if any, as may be detailed and necessary due to particular nature of works wherever applicable i.e. specifications and construction practices published by the IAF/BBMP/BWSSB/BESCOM/KPTCL/Rural Electrification Corporation of India shall be applicable.

1.11 **"Site"** shall mean and include all the area in which operations in respect of the works are carried out. These terms shall also include material stacking yard and the area where temporary structures are put up for installing any machinery etc.

1.12 **"Month"** shall mean a month as reckoned by the English Calendar.

1.13 Words used in singular shall also include the plural and vice versa where the context so demands.

1.14 Word indicating one gender includes all gender.

2. CONTRACTOR TO INFORM HIMSELF FULLY.

2.1 The Contractor shall be deemed to have carefully examined the Contract documents and to have visited the site and fully acquainted himself with the conditions of labour, roads, work, climate, rainfall, type of soil etc., prevalent in the area. Any information available with BMRCL regarding the site conditions will be made available to the Contractor, but BMRCL will not accept any responsibility for the accuracy thereof or the inference that may be drawn there from.

2.2 The Contractor shall in writing get necessary clarifications from the Engineer-in-charge in respect of the meaning of any of the conditions set forth in the Contract documents.

3. CONTRACTOR'S REPRESENTATIVE AND LABOUR.

3.1 The Contractor under intimation to the Engineer shall employ at least one competent representative with a minimum qualification of Diploma in Electrical Engineering duly approved by the Engineer-in-charge to carry out and supervise the works on behalf of the Contractor. The said representative or any one of such representatives, if there be more than one shall be present at the site during working hours, and any written orders or instructions given to such a representative by the Engineer-in-charge, shall be deemed to have been lawfully given to the Contractor.

3.2 The Contractor shall at all times employ labour of every description as the Engineer-in-charge may deem necessary for securing the proper progress of the works and shall on demand furnish from time to time such returns as may be

required of the number and description of unskilled, skilled and supervisory staff actually engaged for the work.

3.3 The Contractor shall furnish the Engineer-in-charge with such reports as he may be required regarding the progress of the works and the organization in connection with the execution of the work.

3.4 The Engineer-in-charge has the right to object to the employment or presence of any representative or other persons or labour employed by the Contractor on the grounds of incompetence, negligence, misconduct and upon such objection being raised, the Contractor shall be bound to remove or cause to remove such person or persons and provide competent substitutes approved by the Engineer-in-charge. The Contractor shall not be entitled to any damage or loss that may be caused by such action of the Engineer-in-Charge.

3.5 **Subcontracting**

The Contactor shall not, without the previous written consent of the Engineer assign or Subcontract his Contract or any part thereof except for minor works. Any such consent given by the Engineer shall not relieve the Contractor from any obligations, duty or responsibility for all or any action of the Subcontractor as if those actions are committed by the Contractor himself.

Any breach of this clause shall entitle the Employer to rescind the Contract and render the Contractor liable for loss or damage arising due to termination.

4. WORKS - GENERAL INFORMATION.

4.1 The Contractor shall execute the works on "**TURNKEY BASIS"** which involves broadly the design, manufacture, testing, supply and transportation to works site, assembly, erection, testing and Commissioning of lines and equipment, backfilling and consolidation and returning the released materials to the respective stores of BMRCL or the owners of the assets as decided by BMRCL.

4.2 The details of equipment to be supplied, transported, assembled, erected, tested and commissioned in each of the work are indicated in the Financial Package. The quantities indicated in Schedule of Prices are only approximate & during the execution of the Contract, BMRCL reserves the right to increase or decrease the quantities of items under the Contract in accordance with the conditions of Contract.

4.3 Before finalizing the orders for purchase of materials the Contractor shall undertake survey of the works to be carried out and make a reliable estimate of the actual quantity of each material required for the intended works. The Engineer-in-charge shall arrange to facilitate the Contractor by furnishing the details of the works and route profile etc., as may be required for the purpose,

including deputing of BMRCL officers to the extent deemed necessary by him. However, delay if any in this regard shall not constitute a valid ground for delay in completion of works.

4.4 Any other items of work not specifically mentioned, but which are essentially required for satisfactory performance & completeness of the works shall be deemed to be included in the scope of works and the same shall be executed / carried out by the Contractor.

4.5 The whole of the works together with any temporary works associated therewith shall be carried out by the Contractor in a satisfactory and workmanship like manner with the materials and workmanship as specified to the entire satisfaction of the Engineer-in-charge, and in such a manner as the Engineer-in-charge may direct. The Contractor shall attend to and carryout without any delay all orders and instructions which the Engineer-in-charge may issue from time to time.

4.6 The whole of the works shall be executed in strict conformity with the Contract documents and such explanatory, detailed or modified drawings and directions as may be furnished from time to time by the Engineer-in-charge for the guidance of the Contractor.

4.7 In case of any defect in material supplied or the work carried out or both noticed by BMRCL/Contractor during execution of the work or during the period of Performance Guarantee, the Contractor shall replace the defective material and redo the defective work to the satisfaction of Engineer-in-Charge or the authorized officer of BMRCL/BWSSB] / IAF without any extra cost.

4.8 The Contractor shall be deemed to have satisfied himself as to the correctness and sufficiency of the Contract Price. The Contract Price shall cover all his obligations under the Contract and all things necessary for the proper execution and completion of the Works, testing and commissioning and remedying of any defects.

4.9 Contractor shall take full responsibility for adequacy of safety and security of the Works. He shall also have full regard for safety of all persons on or in the vicinity of the site.

4.10 The Contractor shall take all reasonable steps to protect the environment and to avoid injury, damage and nuisance to people and property resulting from pollution, noise and other results of his operations. The Contractor shall ensure that air emissions, surface discharges and effluent from the Site during the Contract Period shall not exceed the values prescribed by law.

4.11 It shall be the responsibility of the Contractor to provide at his own expense the required sheds, store houses and yards for execution of the Works and provide free access to the Engineer or his Representative/s who have right of inspection including that of instructing the Contractor to remove a particular material from the stores and not to use the same on the Works.

4.12 The Works are handled by the concerned Engineer-in-charge and will be assisted by authorized Officer for monitoring the proper execution of all the works and for measurement of works executed by the Contractor.

5. LOCAL CONDITIONS.

5.1 It will be imperative for each Contractor/ Tenderer to fully inform himself of all local conditions and factors, which may have any effect on the execution of the works and services covered under these documents and specifications.

5.2 It must be understood and agreed that such factors have properly been investigated and considered while submitting the Tender. No claim what so ever including those for financial adjustment to the Contract awarded under these specifications and documents shall be entertained by BMRCL. Further, no change in the time schedule of the Contract or any financial adjustment (s) arising thereof shall be permitted by BMRCL, which are based on the lack of such clear information.

6. DRAWINGS.

6.1 Unless otherwise provided for in the Contract, the Engineer-in-charge shall furnish to the Contractor, free of charge copies of drawings (GAD, distribution / transmission route survey drawings etc.,) and specifications as may be considered by the Engineer-in-charge to be reasonably necessary for the execution of the work.

6.2 Drawings, specifications and copies thereof furnished by the Engineer-in-charge shall not be used for other works and shall be returned to the Engineer-in-charge, on completion of the works. Drawings, specifications or other Contract documents shall not be reproduced or caused to be reproduced, without the previous written permission of the Engineer-in-charge.

7. CONTRACT INCLUDES ALL NECESSARY OPERATIONS.

7.1 The Contract includes the whole of the works which are described herein or implied by the Contract documents or which may be inferred to be obviously necessary for the efficiency, stability and completion of the permanent works and the performance of all operations and the supplying of all materials and things described in or implied by the Contract documents or which may be deemed necessary for the completion of the works in all respects to the

complete satisfaction of the Engineer-in-charge, shall be deemed to be included in the Contract.

7.2 Works shown upon drawings without being mentioned or described in the specifications or shall nevertheless be held to be included in this Contract in the same manner as if they had been expressly shown upon the drawings and described in the specifications also.

8. DISCREPANCY BETWEEN DRAWINGS AND SPECIFICATIONS.

In case of errors, omission and / or disagreement between the written and scaled dimensions on the drawings or between the drawings and specifications, the Contractor shall make a reference to the Engineer-in-charge, whose elucidation or decision shall be considered authentic. For any error in the work due to such errors or omissions or disagreements, if he fails to refer them to the Engineer-in-charge, and get elucidation before starting the work, or specific part of the work executed, he shall himself be liable for the consequential losses, if any.

9. THE CONTRACTOR SHALL SUPPLY AND BE RESPONSIBLE FOR THE EFFICIENCY OF THE MEANS EMPLOYED.

The Contractor shall supply and bear responsibility for procuring all materials, plant, Labour, scaffolding, timbering, machinery, tools and other implements and generally all means required for the fulfillment of the Contract, whether such means be or not be recommended by the Engineer-in-charge. No materials, plant, tools, tackles or equipment brought to the site for use on the works shall be removed from the site without previous written permission of the Engineer-in-charge.

1. WATCH AND WARD.

Except as may be specifically provided the Contractor shall be responsible for all proper watch & ward of all works comprised in the Contract & for providing necessary temporary footways & fences etc.

2. SAFETY DEVICES.

The Contractor shall at his own cost provide such safety devices, like steel or fiber glass helmets, slings, ropes, belts, covering for legs and hands, masks, etc., for the safety of personnel and glow tapes, glow signs, barricades, etc., for the safety of public, commuting near the work place. when working underground or in water or when handling cement, or working on steep slopes

etc., and as the Engineer-in-charge may direct in the interest of safeguarding the workmen from liability to accidents or damages to health and to carry out such measures as the Engineer-in-charge may prescribe in this behalf. The Contractor shall be responsible for the workmen employed by him or third party in case of accidents or damages resulting in bodily injury or affecting their health and to carry out such instructions regarding preventive or safety measures as the Engineer-in-charge may prescribe on this behalf. The Contractor shall also be solely responsible for the adequacy of the strength and design of scaffolding, gangways, and notice board etc., erected for the execution of the works. All the works shall be in conformity with all the laws prevailing on the land.

12. AGREEMENT AND PERFORMANCE SECURITY.

3.1 Within a period of **Fourteen** (**14) days** or such other period as may be mentioned in the letter of notification of award of the Tender, the Successful Tenderer shall furnish the required Performance Security and shall enter into an Agreement with BMRCL within Twenty-one (21) days of Notification of Award of works according to the conditions of the Contract on Karnataka Government Stamp paper of requisite value as stipulated in the Karnataka Stamp (amendment) act 2023 as per the format enclosed at **Annexure-A**. The cost of the stamp duties and similar charges imposed by law shall be borne by the contractor.

3.2 Performance Security is a deposit with BMRCL of an amount equal to **Ten (10) percent of the Contract Price.** The Performance Security shall be in the form of:

a) Demand Draft or Pay Order or Banker's cheque payable at Bengaluru drawn in favour of Bangalore Metro Rail Corporation Limited, on any Indian Nationalized Bank located in India.

OR

b) Bank Guarantee/ e-BG issued by an Indian Scheduled Bank (excluding Co-operative Banks) or from a Scheduled Foreign Bank as defined in Section 2(e) of RBI Act 1934 read with Second Schedule drawn on and payable/Extendable at a designated branch in Bengaluru as per the format given in Annexure-C (BG/E-BG – CPS) of Section VII.

OR

c) Insurance Surety Bonds (ISB) issued by Insurance Company authorised by Insurance Regulatory and Development Authority (IRDA) of India drawn on and payable/Extendable at a designated branch

in Bengaluru as per the format given in Annexure-C (ISB – CPS) of Section VII. The Bank Guarantee/ e-BG / ISB shall be valid for three (3) months beyond the date of completion of Guarantee period.

3.3 Failure of the successful Tenderer to furnish the required Performance Security shall be a ground for the annulment of the award of Contract and forfeiture of the Tender Security / EMD pursuant to ITT clause 16.

3.4 The whole or such portion of the Performance Security amount as he may consider fit shall be liable to be forfeited by the Employer at the discretion of the Employer, in the event of any breach of Contract on the part of the Contractor.

3.5 In the event of variations during the execution of the Contract which result in payments to the Contractor over and above the original Contract Price, the Performance Security shall be suitably adjusted every 6 months at the request of the Employer.

3.6 All expenses incurred for completing and stamping the Contract Agreement shall be borne by the Contractor. The stamped Agreement shall be deposited with BMRCL and a copy of the Agreement signed by both parties shall be delivered to the Contractor.

3.7 After the Tender has been accepted by BMRCL or by any Officer duly authorized by BMRCL to accept the Tender, all orders and instructions to the Contractor, except as herein otherwise provided, will be given by the Engineer-in-charge, on behalf of BMRCL.

3.8 In case the validity of the Bank Guarantee/ e-BG /ISB for performance of Contract is to be extended for any reason, the Contractor shall get the validity extended and the cost of which shall be borne by the Contractor.

3.9 The Performance Guarantee will be discharged without any interest at the end of Guarantee Period, unless otherwise specified in SCC.

13. LIABILITY FOR ACCIDENTS TO PERSONS.

13.1 The Contractor shall be solely responsible for all accidents to persons employed by him, which may arise in the execution of the works, and from whatever cause they may arise during execution and maintenance of works included in the Contract and shall arrange for insurance as prescribed in the Tender document.

13.2 The Contractor shall indemnify BMRCL against all action, suits, claims, demands, cost of expenses arising in connection with injuries suffered upto the date when the works or plant shall have been taken over under and of the clauses herein by persons employed by the Contractor or his Subcontractor

whether under the general law or under the Employee's compensation Act or any other statute in force on the date of the Contract dealing with the question of the liability of employee from injuries suffered by employees and to have taken steps properly to ensure against any claims there under.

13.3 On the occurrence of accidents which result in the death of the workmen employed by the Contractor or which result in injury so serious as to be likely to result in the death of any such workmen, the Contractor shall within 24 hours of happening of such accident, intimate in writing to the concerned Engineer-in-charge, the details of such accidents. The Contractor shall indemnify BMRCL against all loss or damages sustained by BMRCL resulting directly or indirectly from Contractors failure to give intimation in the manner aforesaid or otherwise to confirm to the provision of the Employee's compensation Act, in regard to such accident. In the event of any claim being made or action brought against BMRCL due to negligence of the Contractor and arising out of the matter there of the Engineer in-charge of BMRCL shall assist, if so required, but at the sole expense of the Contractor, and, he may conduct all negotiations for the settlement of the case or any litigation that may arise there from. In such cases, BMRCL shall at the expense of the Contractor extend all available assistance for any such purpose.

13.4 In the event of any accident in respect of which compensation may become payable under Employee's Compensation Act, whether by the Contractor or by BMRCL as Principal, it shall be lawful for BMRCL to retain out of money due and payable to the Contractor such sum or sums of money as may be in the opinion of the said Engineer-in-charge, sufficient to meet such liability. Any balance left out money so retained after meeting such liability shall be refunded to the Contractor.

13.5 The Contractor shall at all times indemnify BMRCL against all claims for damages or compensation under the provisions of payment of Wages Act – 1936, Minimum Wages Act -1948, Employers Liability Act – 1938, the Employee's Compensation Act – 1923, Industrial dispute Act – 1947, Indian Factories Act- 1948, Contract Labour Act – 1970, Maternity Benefit Act – 1961 or any modifications thereof made therein from time to time.

13.6 The Contractor shall bear the liability of all the risks and insurance and BMRCL shall not be responsible for any liabilities, whatsoever in any way.

13.7 The Contractor shall deliver the policies / Certificates of Insurance to the Engineer-In-charge for approval before commencing the work.

14. LIABILITY FOR DAMAGE TO WORKS OR PLANT.

The Contractor shall during the progress of the works properly cover up and protect the work place and plant leased by IAF/BMRCL from injury by exposure to weather and shall take every reasonable proper and timely precautions against accidents or injury to the same from any cause, and shall be answerable and liable for all accidents or injuries resulting there from or occasioned by the Acts or omissions of the Contractor or his workmen or Subcontractor and shall indemnify the employer for all losses and damages to the works or plant arising from such accidents or injuries.

15. LABOUR CONDITIONS.

15.1 The Contractor shall comply with the labour laws in force and shall furnish the returns and information as may be specified from time to time. He shall not employ or engage migrant labourers without express permission of the Engineer- in- charge.

15.2 The Contractor shall as far as possible obtain his requirements of labour from the local area, and through the employment exchanges wherever so required by law. The Contractor shall pay fair and reasonable wages as prescribed under Minimum wages Act 1948 (whether or not such wages are controlled by any law existing at the time) to workmen employed by him for the work

15.3 The Contractor shall provide at his own cost, suitable shelters at the work spot for meals and arrange for supply of clean, safe, potable water to his workmen. Where women are employed in numbers more than 50 at a spot, the Contractor shall arrange for “Crèches”. The Contractor may be permitted, if he finds it necessary, to work on Sundays subject to the provisions of labour Act with the prior consent of the Engineer-in-charge and after giving the intimation at least two days in advance.

16. MEDICAL FACILITIES FOR LABOURERS.

16.1 The Contractor shall arrange to build at his own cost proper camp for his labourers and provide such camps with facilities of clean potable treated water and light (where ever possible) and arrange for drainage and proper disposal of sewage. He shall abide by the rules framed on this behalf by the Engineer-in-charge or the Health Office / Environment officer on the project.

16.2 The Contractor shall also provide at his own cost for the Medical supervision of his workmen against epidemics & arrange for taking anti malaria measures, vaccination against small pox, typhoid, cholera, etc., and examination of persons employed.

16.3 The Contractor shall also at his own cost provide for first aid at the work spot and for medical aid at his main camp to all his employees as directed by the

Health Officer / Environment Officer and submit reports regarding such conditions in the camps.

17. MATERIALS, WORKMANSHIP etc.,

The work shall be executed in a thoroughly standard manner with materials and workmanship of the best quality and strictly in accordance with the specifications and drawings or written instructions as may from time to time be furnished to the Contractor and shall be completed in every respect with all materials and workmanship implied and necessary according to the fair interpretation and meaning of the same. Should there be any discrepancy between the drawing and specifications or any difference or dispute as to the dimensions to be worked to or the periodical quantity to be executed or with respect to any subject arising out of this Contract, the decision of the Engineer-in-charge shall be final and binding on all parties.

18. MATERIAL PROCUREMENT:

The Contractor shall procure the materials from BESCOM/ KPTCL/ BWSSB/ BMRCL approved vendors only conforming to the Guaranteed Technical Specifications/Parameters as laid out by BMRCL/IAF/BWSB/BESCOM/KPTCL.

19. CONTRACTOR TO INFORM ENGINEER-IN-CHARGE THE ARRANGEMENTS MADE BY HIM FOR THE EXECUTION OF WORK.

19.1 The Contractor shall furnish schedule of work and the CPM/PERT chart in / MS Project for carrying out the work and the same shall be followed during execution.

19.2 The Contractor shall furnish the Engineer-in-charge a statement in writing of the arrangements he proposes to adopt for the execution of the work and in case the Engineer-in-charge considers any alterations in the same desirable, the Contractor shall on notice thereof adopt such alteration.

19.3 The Engineer-in-charge and his authorized assistants or agents shall have, at all times, full power to inspect the works wherever in progress either on the site, or at the Contractor’s premises wherever situated on the premises of any firm or company where work in connection with this Contract may be done and the Contractor shall provide all reasonable facilities and safety devices, at his own cost, for enabling such an inspection of works to be carried out, and any tests to be conducted if necessary. The Contractor shall maintain at such work spot a Work Order book, in which the instructions in the said Work Order, shall be promptly noted and sent to the inspecting Officer and provide a copy of the same to the Engineer-in-charge.

20. OPENING OUT OF THE WORKS.

Should the Engineer-in-charge consider it necessary in order to satisfy himself as to the quality of work, the Contractor shall at any-time during the execution of the work, pull down or cut into any part of the work and make such openings into and to such an extent through the same as the Engineer-in-charge may direct and the Contractor shall make good the whole of Work at his own cost.

21. REMOVAL OF IMPERFECT WORK.

21.1 If any work has been executed with unsound, imperfect for unskilled workmanship or with materials of any inferior quality not in accordance with the specifications and drawings, the Contractor shall at his own cost rectify, reform, remove and reconstruct the same either in whole or part as may be directed by the Engineer-in-charge, whether or not the value of any such work (or materials) shall have been included in any payment made to the Contractor.

21.2 Should the Engineer-in-charge consider in his unfettered discretion that he could accept a work which is not strictly in accordance with the Contract documents but is structurally sound and would serve the purpose for which it is executed, he may fix a price less than that Contracted for, and his decision regarding the acceptance and the reduced price to be paid for, shall be final and binding on the Contractor.

22. SUSPENSION OF WORK.

22.1 The Engineer-in-charge may from time to time by direction in writing without in any way vitiating the Contract, direct the Contractor to suspend the works or any part thereof at such time or times and so long as the Engineer-in-charge may deem desirable, and the Contractor shall not after receiving such written notice proceed with the works therein ordered to be suspended until he shall have received a written notice or authority from the Engineer-in-charge to proceed with the works.

22.2 Should the works be ordered to be suspended directly or indirectly as a result of the Contractor not complying with any of the provisions of the Contract in respect of the quality of the materials, workmanship, progress, mode of execution, the order of execution etc., or in the interest of safety of the works, or due to acts of nature, force majeure or war, the Contractor shall not be entitled to claim any compensation for any loss he may be put to. If however, the works be ordered to be suspended for reason for which the Contractor is not responsible directly or indirectly he will be entitled to compensation as may be determined by the Engineer-in-charge whose decision in the matter

shall be final. In such matters the profits that the Contractor would have earned had the work not been suspended shall not be taken into consideration.

23. ACCESS TO SITE AND WORK ON SITE.

BMRCL may, if it deems fit from time to time, enter upon any land which may be in the possession of the Contractor under this Contract for the purpose of executing any works by itself or through its agents or through the other Contractors or workers of BMRCL at its option, and the Contractor shall in accordance with the directions of the Engineer-in-charge afford all reasonable facilities for the execution of the works, including the Occupation of lands by structures or otherwise for any Contractors or their workmen or for BMRCL-workers who may be employed in the execution of Works, on or near the site of work not included in this Contract or any Contract in connection with or ancillary to such work and in default the Contractor shall be liable to compensate BMRCL for any delay or expense incurred by the reason of such default. Provided always that if the exercise of these powers, shall cause any damage to the Contractor he may as and when damage shall arise make a statement of the same to the Engineer-in-charge who shall from time to time certify to BMRCL, the value in his judgment of such damage & BMRCL shall from time to time pay the Contractor the amount if any so certified by the Engineer-in-charge.

24. DEVIATIONS, ALTERATIONS ETC., IN THE WORKS.

24.1 The Contractor shall not in any way alter any part of the work in respect of design, quantity, material or specification, without the written consent of the Engineer-in-charge, but the Engineer-in-charge may from time to time or at any time during the progress of the works direct in writing any deviations, addition, omissions, or alterations, to be made in or to the works or any part thereof in respect of quantity, design, material, workmanship and or specifications and may direct the Contractor to curtail or omit any of the works or to commence and execute any new or substituted work in such order and manner as he may deem fit and any such direction of the Engineer-in-charge and any such deviation alteration, addition and omissions made in pursuance thereof shall not violate the Contract or be made the ground for any claim for compensation for alleged loss or profit in respect of omitted works or for extra rate of payment for additional works.

24.2 In the event of any disputes arising out of the validity of the claims or as to the amount to be paid or allowed in respect thereof, the decision of the Engineer-In-Charge shall be final and binding and in the mean while the Contractor shall either proceed with or stop the works as may be ordered by the Engineer-in-charge.

25. MEASUREMENT AND TERMS OF PAYMENTS.

25.1 The Contractor shall submit an invoice / Bill in quadruplicate (4 copies) to the Engineer-in-charge in prescribed form. Such Payment will be made after item wise measurements for different works as recommended by the Engineer-in-charge as per the Contract.

25.2 The payments to Contractor are subject to recoveries, which are due from the Contractor as indicated in Clause 26.7 of this section.

25.3 The authorized representatives of the Engineer-in-charge and the Contractor shall jointly take the measurements. The representative of the Engineer-in-charge will give a week's notice to the Contractor of his intention to record the measurement immediately on report of completion of all works by the Contractor and if the Contractor's representative fails to join the Engineer-in-charge representative, the latter may proceed with the measurements by himself and the Contractor shall have to accept these measurements as correct and binding on him.

25.4 On the basis of these joint measurements, payment will be made to the Contractor by the Engineer-in-charge according to the procedure prevalent in BMRCL and as far as possible within **28 working days** after submission of the bills & after recording the measurements as stated above.

25.5 Wherever approval of the Inspectorate authorities is required under statute, payment shall be made by the Contractor and reimbursed by BMRCL on production of bills/vouchers.

25.6 All materials and work for which payment is made in part or full shall become the sole property of BMRCL, but this provision shall not relieve the Contractor of his responsibility for the care and protection of the materials and works at his own cost and his liability to make good the damage if any unless and until the whole work is deemed to have been completed, commissioned and handed over to BMRCL/IAF, in accordance with the terms and conditions of the Contract.

25.7 The periodical measurements and payments will not entitle the Contractor to any claim that the works for which payment has been made are accepted as complete in accordance with the specifications, drawings or other Contract documents and in no way will curtail the right of the Engineer-in-charge to subsequently direct the removal of imperfect work or pay at a lower reduced rate, or to re-measure the works.

25.8 These periodical payments shall be treated only as advance on account to be adjusted finally after the works are finally measured on completion and the final bill is prepared.

25.9 The Contractor shall not be entitled to claim any interest upon any arrears or upon any balance, which may be found due to him at any time.

25.10 **Stages of payment:**

The terms of Payments will be as stated below:

(a) Sixty percent (60%) **of the Ex-works price** plus 100% taxes i.e. CGST, SGST, IGST, UTGST, Custom Duties on Imports, CESS if any, as the case may be and 100% Freight & Insurance charges in respect of the materials supplied to store/site on receipt after supply of Turnkey Materials shall be paid subject to the Certification by the concerned Engineer-in-charge with submission of the following:

i) Contractor's Detailed Invoice.

ii) Pre-dispatch clearance certificate issued by the Employer, prior to dispatch of the Consignment.

iii) Physical Verification Certificate by the site Engineers.

iv) Test Certificates.

v) The vendor's invoice/ delivery challan.

vi) Copy of the Certificate of Transit Insurance.

vii) Indemnity Bond and Storage Insurance.

(b) Thirty percent (30%) of the Ex-works material cost shall be paid based on erection of equipment/materials, laying of UG cable and all other associated works in complete manner, ready for commissioning in all respect to the satisfaction of the Engineer-In-Charge.

The above Payment terms are subject to the following conditions stated herein below:

i) The Paying authority shall ensure before making any payment towards materials that the materials have been received at site.

ii) The work is going according to the plan.

iii) Notwithstanding anything contained to the contrary in the Tender documents, storage insurance for materials stored at the site by the Contractor shall be to the account of the Contractor alone and no amount whatsoever is payable by BMRCL.

(c) Balance Ten percent (10%) of Ex-works material cost shall be paid after commissioning subject to:

i) The Certification by the concerned Engineer in charge

ii) Submission of as built drawings.

iii) Handing over to IAF / BMRCL/BWSSB authorities.

(d) Labour charges for erection of equipments/materials, cables laying, termination etc including civil work will be paid 100% on completion of the work, in all respects.

i) The Engineer-in-charge ensures that the work has completed in all respects as per Tender Conditions except Commissioning.

ii) On certification of the Engineer-in-charge after duly having joint Measurements along with the Contractor.

26. TAXES AND DUTIES.

26.1 Contract prices shall be inclusive of all applicable taxes, duties and cess including taxes to be deducted at source, insurance and exclusive of SGST and CGST. BMRCL shall pay the SGST and CGST as applicable as per laws.

26.2 Income tax and other statutory deductions of the State & Central Government as applicable from time to time shall be made from the Contractor's Bills & directly remitted to concerned department by BMRCL. If the income tax is to be deducted at lower rate, then the Contractor has to furnish a lower deduction certificate issued by the jurisdictional IT authorities.

26.3 The Contractor shall maintain complete records in respect of payments made by them as required by law.

26.4 The Contractor shall furnish along with the 2nd and subsequent bills copies of all the purchases of Goods and Services made within the State of Karnataka.

26.5 BOCW cess at the rate of 1% of the Total Bill Amount as per "The Building and Other Construction Workers Cess act 1996" shall be deducted from each Interim Payment Certificate (IPC) of the Contractor.

26.6 **NOT USED**

26.7 **Recoveries**

26.7.1 Recoveries due from the Contractor up to the end of the month previous to the one in which bill is prepared shall be made from the bills approved for payment every month in the following order of priority and extent.

a) Penalty, in full, if any to be levied.

b) Expenditure incurred by BMRCL on behalf of the Contractor in full.

c) Charges for services such as water supply, power etc., if any, rendered by BMRCL in full.

d) Statutory deductions like Income Tax etc;

e) Any recoveries or other sums due from the Contractor to BMRCL.

26.7.2 The extent of recovery to be made from the Contractor's bill may be modified at the discretion of the Engineer-In-Charge, if the bill under question includes items whose rates are not finalized or the rate for such items is not fully collected.

27. DATE OF COMPLETION.

27.1 The works shall be completed in all respects within the period specified in Appendix to Form of Tender (Section VI) including monsoon period.

27.2 The necessary PERT Chart duly indicating the completion of each stage of work on Individual sections and the total completion period according to delivery schedule shall be furnished, to the Engineer-in-charge.

27.3 The Contractor shall supply, erect and construct the whole of the works to the satisfaction of authorities with all certification and hand over them to IAF/BMRCL/BWSSB on or before the date or dates specified as incorporated in the Contract Agreement. Provided always that, if in the opinion of the Engineer-in-charge, any alteration, addition, subtraction or modification of the work due to any strike or lockout of any workmen employed by the Contractor or by causes directly due to war or the unforeseen acts of nature or due to actions caused by BMRCL by issuing any orders, drawings, instructions or directions in time or by the suspension of work, the Engineer-in-charge, if in his discretion deem fit, either forthwith or at any later time and from time to time not withstanding that the prescribed or extended time for completion has expired or that the works have been completed, by writing extend the time for the completion of the work to such date as he may deem fit and proper, provided always that the Contractor makes a written application to the Engineer-in-charge at or before the time when the cause of the delay is occurring or about to occur or within three days from the occurrence of such delay. Unless the time is extended by the Engineer-in-charge, the prescribed time may not be extended not withstanding delays from the foregoing or any other cause of whatever kind. However, the Contractor shall not be responsible for delay due to accordance of approval by the Inspectorate. In such a case,

where the Contractor is entitled for the extension of time, no monetary claims whatsoever shall be paid or entertained on this account.

27.4 The Employer shall give possession of all parts of the site progressively for the completion of works to the contractor, if, possession of part of the site is not given by the date stated in the contract or Notice to proceed / LOA, the reasonable extension of time may be given. However, no monetary claims whatsoever shall be paid to the contractor or entertained on this account. The delay in access to site shall not be considered as “Breach of Contract”.

28. PROGRESS OF WORK AND FAILURE TO ABIDE BY THE PROGRAM OF WORK AND PENALTIES THEREOF

28.1 The time allowed for carrying out the work as per program shall strictly be observed by the Contractor as set out in the Tender document / agreement. The work shall be carried throughout the stipulated period of Contract proceed with all due diligence, time being deemed to be the essence of the Contract on the part of the Contractor. If the Contractor at any stage of the progress fails to complete the work, the Engineer-in-charge shall be at liberty to adopt any one of the following courses after sending written notice to the Contractor.

28.2 To employ labour paid by BMRCL, to supply materials to carry out the work or any part of the work, debiting the Contractor with the cost of labour, transportation, price of materials etc., (as to the correctness of such cost and price, the decision of the Engineer-in-charge being final & conclusive against the Contractor) and crediting the BMRCL employed labour with the value of work done in all respects in the same manner and at the same rates as if it has been carried out by the Contractor under the terms of his Contract and in that case, certificate of the Engineer-in-charge as to the value of the work done being final and conclusive against the Contractor.

28.3 In case the Contractor abandons the work or does not execute the work as per the Contract conditions, BMRCL would get the works executed by another agency at the “risk and cost” of the Contractor.

28.4 In order for the work of the Contractor to be measured and to take such part, thereof, as shall be unexecuted out of his hands and to give to another Contractor to complete the same in which any expense which may be incurred in excess of the same, which would have been paid to the original Contractor, if the whole work had been executed by him (as to the amount of which excess expenses, the decision of the Engineer-in-charge shall be final and conclusive) shall be deducted from any money due to contractor by BMRCL under the Contract or otherwise from his Earnest Money, further Security Deposit etc.,

28.5 To allow the original Contractor to continue the work, levying the penalty as per rates noted below for the number of days that the Contractor takes to complete and deliver portion of the work which was scheduled to be completed as per program in the agreement.

29. PENALTY FOR DELAY IN EXECUTION OF THE WORK

The penalty shall be one (1) percent of the Original Contract Price per week of delay or part thereof subject to a maximum of 10% on the portion of work which is not completed for beneficial use within the time stipulated in clause 27 above.

a) The period(s) of continuance of delay, if any, beyond 10 weeks shall be at the sole discretion of the Engineer-in-charge. If the Contractor still fails to complete the work within such extension period, the Contractor shall be liable for paying the liquidated damages/penalty as decided by BMRCL.

b) Penalties levied for the following:

(i) Non-fulfillment of program of works within the stipulated period.

(ii) The number of days allowed beyond the stipulated period for completing the work and

(iii) Extra cost that might be incurred by BMRCL for getting the balance work completed through any other agency as it deems fit under the circumstances will be deducted from money due to him by BMRCL for work done under the Contract or otherwise.

c) The levy of penalty is however exempted, if extension of time granted for the execution of work for valid reasons.

30. COMPLIANCE WITH INSTRUCTIONS.

If the Contractor fails to work with diligence and expedition, or shall refuse or neglect to comply with any reasonable orders given to him in writing by the Engineer-in-charge in connection with the work or contrivances of the provisions of the Contract, BMRCL may give “seven days” notice in writing to the Contractor, to make good the failure, neglect or contravention complained of, and should the Contractor fail to comply with the notice within the specified time from the date of service thereof in the case of a failure, neglect or contravention, capable of being made good within that time or otherwise within such time as may be reasonably necessary for making it good, then and in such case BMRCL shall be at liberty to employ other workmen and forthwith perform such work as the Contractor may have neglected to do or if BMRCL shall deem fit it, shall be lawful to take over the work wholly or in part of the Contractor’s hands and reconstruct the work or any part and in that event, BMRCL shall without being responsible to the Contractor for the fair wear and

tear of the same have the free use of all the materials, tools, tackle, construction plant or other things for use at any time in connection with the work to the exclusive of any right of the Contractor over the same and BMRCL shall be entitled to retain and apply any balance amount which may be otherwise due on the Contract to the Contractor including Earnest Money, Security Deposit and retention money, if any, for the performance of the Contract, or such part thereof as may be necessary to the payment of the cost of executing such work as aforesaid.

31. POWERS TO TAKE OVER PLANT AND EQUIPMENT TO ENFORCE PROGRESS

31.1 Notwithstanding anything contained in the clause herein above, if the Contractor fails to work with due diligence and speed or refuses or neglects to comply with any lawful and reasonable orders given to him in writing by the Engineer-in-charge or contravenes any of the provisions of the Contract, the Engineer-in-charge may give seven days' notice in writing to the Contractor to make good the failure, neglect or contravention complained of and should the Contractor fail to comply with the notice within the time specified in the notice, then in case the Engineer-in-charge shall be at liberty to employ other workmen and forthwith perform such work as the Contractor may have neglected to do, or if deemed fit, it shall be lawful for the Engineer-in-charge to take the work wholly or in part, out of the Contractors' hands and reconstruct it at a reasonable price with any other person or persons or provide any other materials, tools and tackle or labour for the purpose of completing the work and in such an event the Engineer-in-charge shall without being responsible to the Contractor for fair wear and tear, have the free use of all materials, tools, tackle, plant or other things including operating personnel which may be on the site for the use at any time in connection with the work to the exclusive of the right of the Contractor, over the same and the Engineer-in-charge shall be entitled to retain and appropriate and balance which may otherwise be due to the Contractor as may be necessary to the payment of the cost of executing such works aforesaid.

31.2 If the cost of executing the work as aforesaid exceeds the balance due to the Contractor and the Contractor, fails to make good the deficit, the said materials, tools, tackle, plant or other things, which were the property of the Contractor, may be sold by the Engineer-in-charge and the proceeds thereof applied towards the payment of such difference and cost of any incidental to such sale, shall be paid by the Contractor forthwith but when all expenses,

costs and all charges incurred in the completion of the works are paid by the Contractor, all such materials, tools, tackle, construction plant or other things, remaining unsold may be allowed to be removed by the Contractor**.**

32. TERMINATION OF CONTRACT.

32.1 Delay by the Contractor in the Performance of his obligations under the Contract shall render the Contractor liable for any, or all of the following sanctions

a) To recover from the Contractor as agreed liquidated damages or by way of penalty clause above and to purchase elsewhere/complete the works after giving due notice to the Contractor, on to the account and at the risk of the Contractor, such stores/works not so delivered/completed or others of a similar description without canceling the Contract in respect of the consignment/work not yet due for delivery, but the Supplier/Contractor shall not be entitled to any savings on such purchases/works made against default.

b) To cancel the Contract.

c) To forfeit Performance Security.

d) To blacklist or not to consider the Contractors future offers for a specified period or such other periods as decided by BMRCL.

32.2 Termination for Convenience

32.2.1 BMRCL may, by a written notice of 14 days sent to the Contractor, terminate the Contract, in whole or in part at any time for its convenience. The notice of termination shall specify the termination is for BMRCL’s Convenience, the extent to which performance of work under the Contract is terminated and the date upon which such termination is effective.

32.2.2 The Contractor upon receipt of such notice shall discontinue the work on the date and to the extent specified in the notice, make all reasonable efforts to obtain cancellation of all orders and the Subcontracts to the extent they are related to the work terminated and upon terms satisfactory to BMRCL.

32.2.3 After termination, the Employer (BMRCL) may complete the works and arrange for any other entities to do so at the risk and cost of the Contractor. The Employer and his entities may then use the working area, Contractors documents and his any other related documents made by or on behalf of the contractor.

32.3 On termination of the Contractor’s default, the Employer shall be entitled to:

a. Forfeit the whole or such portion of the Performance Security amount as it may consider fit, and

b. Recover from the Contractor the cost of carrying out the balance work in excess of the sum which he would have been paid according to the

certificate of the Engineer, if the works had been carried out and completed by the Contractor under the terms of Contract. Such certificate shall be final and binding upon the Contractor. The amount to be recovered may be deducted by the Employer from any monies then due or which, at any time thereafter, may become due to the Contractor under this or any other Contract or otherwise.

33. FORCE MAJEURE.

33.1 For the purposes of the Contract “Force Majeure” means, an event which could not reasonably have been avoided by a diligent party in the circumstance, which is beyond the reasonable control of a party and which makes the performance of an obligation as to impossible in the circumstances and includes, but is not limited to, war, riots, civil disorder, earthquake, storm, flood, epidemics, quarantine restrictions, or other adverse weather conditions strikes, lockouts or other industrial action, Electrical Grid failure, confiscation or any other action by Government agencies.

33.2 Force majeure shall not include any event, which is caused by the negligence or intentional action of a party or such party’s Subcontractors or agents or employment, or by a failure to observe good Engineering practices.

33.3 Force Majeure shall not include insufficiency of funds or failure to make any payment required hereunder.

33.4 The Contractor or the BMRCL shall not be liable for delays in performing his obligations resulting from any Force Majeure cause as referred to and/or defined above. The date of Completion will subject to hereinafter provided, is extended by a reasonable time even though such cause may occur after Contractor's Performance of obligation has been delayed due to other causes.

34. COMPLETION & FINAL CERTIFICATE.

34.1 As and when the whole work is completed to the satisfaction of the Engineer-in-charge in accordance with the conditions of this Contract, the Engineer-in-charge shall issue a Completion Certificate and the Engineer-in-charge shall take over the work included in the completion certificate.

34.2 The Contract shall not be considered as complete until a final certificate is issued by the Engineer-in-charge, to the effect that the Contractor has fulfilled all the obligations in the manner provided in the Contract not withstanding any previous entry on the works or taking possession of works or using any part of the work by BMRCL. Final completion certificate shall be issued within one month soon after handing over of completed work and return of all the released material to BMRCL/IAF, physical completion/Commissioning of the work and submission of final as built drawings by the contractor duly attested by BMRCL Engineer In-charge.

35. GUARANTEE OF WORKS / DEFECTS LIABILITY PERIOD (DLP).

35.1 The Contractor shall Guarantee that the equipment/material supplied by him will be new, unused and in accordance with the contract documents and free from defects in material and workmanship and the guarantee period for major materials such as pump sets, HT/LT Cables, starter etc., commencing from the date of commissioning shall be as stipulated by IAF/BWSSB from time to time prevailing as on the date of Bid Submission or 12months from the date of handing over whichever is higher and guarantee period for all other minor materials including erection and civil works shall be for a period of Twelve (12) months from the date of commissioning. The Contractor shall be liable for the equipments / materials or works or any portion thereof found to be defective for causes arising from faulty materials or workmanship or other causes for which in the judgment of BMRCL, the Contractor is responsible. He shall make good any damages arising there from, notwithstanding the fact that the completion certificate may have been issued.

35.2 The Contractor's liability shall be limited to the replacement of any defective parts in the Equipment of his own Manufacture or those of his vendors, under normal use and arising solely from faulty Design, Materials and/or Workmanship provided always that such defective parts are repairable at the Site and are not in the meantime essential in the Commercial use of the Equipment. Such replaced/ defective parts shall be returned to the Contractor unless otherwise arranged. No repairs or replacement shall normally be carried out by the Engineer, when the Equipment is under the supervision of the Contractor's Supervisory Engineer.

35.3 In the event of any emergency where in the judgment of the Engineer, delay would cause serious loss or Damages, repairs or adjustment may be made by the Engineer or a third Party chosen by the Engineer without advance Notice to the Contractor and the Cost of such Work shall be paid by the Contractor. In the event such action is taken by the Engineer, the Contractor will be notified promptly and he shall assist wherever possible in making necessary corrections. This shall not relieve the Contractor of his liabilities under the Terms and Conditions of the Contract.

35.4 If it, becomes necessary for the Contractor to replace or renew any defective portions of the Works, the provision of this Clause shall apply to portion of the Works so replaced or renewed until the expiry of guarantee period from the date of such replacement or renewal. If any defects are not remedied within a reasonable time, the Engineer may proceed to do the Work at the

Contractor's risk and Cost but without prejudice to any other rights, which the BMRCL/IAF may have against the Contractor in respect of such defects.

35.5 The repaired or new parts will be furnished and erected free of Cost by the Contractor. If any repair is carried out on his behalf at the Site, the Contractor shall bear the Cost of such repairs.

35.6 The Cost of any special or general overhaul rendered necessary during the maintenance period due to defects in the Equipment or defective Work carried out by the Contractor, the same shall be borne by the Contractor.

35.7 The acceptance of the Equipment by the Engineer shall in no way relieve the Contractor of his obligations under this Clause.

35.8 In the case of those defective parts which are not repairable at Site but are essential for the Commercial Operation of the Equipment, the Contractor and the Engineer shall mutually agree to a program of replacement or renewal which will minimize interruption to the maximum extent, in the Operation of the Equipment.

36. DEATH, BANKRUPTCY etc.

If the Contractor dies or becomes bankrupt or being a firm commences winding up except for reconstruction purposes or carries on its business under a receiver, the executors, successors or other representatives in law, the liquidator or any person in whom the Contract may become vested, shall forthwith give notice thereof in writing to the Engineer-in-charge and shall take all reasonable steps to prevent stoppage of works for one month during which period he shall guarantee as the Engineer may require but not exceeding the period of option in the event of stoppage of works, the period of option shall be fourteen days only. Provided that, should the above option not be exercised, the Contract may be terminated by the Engineer and any money pending with BMRCL may be forfeited, except in case of termination caused by the death of the Contractor.

37 INSURANCE

37.1 The Contractor at his Cost shall arrange, secure and maintain all Insurance as may be pertinent to the Works and obligatory in terms of law to protect his interest and interests of the BMRCL against all perils detailed herein. The form and the limit of such Insurance as defined herein together with the under-writer in each case shall be acceptable to the Employer. However, irrespective of such acceptance, the responsibility to maintain adequate Insurance Coverage at all time during the period of Contract shall be of Contractor alone. The Contractor's failure in this regard shall not relieve him of any of his Contractual responsibilities and obligations. The Contractor shall, however, be

authorized to deal directly with Insurance Company or Companies and shall be responsible in with regard to maintenance of all Insurance covers. Further the Insurance coverage shall be in Indian Rupees.

37.2 Any loss or Damage to the Equipment/materials during handling, transportation, Storage, Erection, putting into satisfactory operation and all activities to be performed till the successful completion of Commissioning of the Equipment shall be to the account of the Contractor. The Contractor shall be responsible for preference of all Claims and make good the Damages or loss by way of repairs and/or replacement of the Equipment, Damaged or lost. The transfer of title shall not in any way relieve the Contractor of the above responsibilities during the period of Contract. The Contractor shall provide the BMRCL with copy of all Insurance policies and Documents taken out by him in pursuance of the Contract. Such copies of Documents shall be submitted to the BMRCL immediately after such Insurance coverage. The Contractor shall also inform the BMRCL in writing at least sixty (60) Days in advance regarding the expiry /cancellation and/or change in any of such Documents and ensure revalidation, renewal etc., as may be necessary well in time.

37.3 The perils required to be covered under the Insurance shall include, but not be limited to fire and allied risks, miscellaneous accidents (Erection risks) Workman compensation risks, loss or damage in transit, theft, pilferage, riot and strikes and malicious damages, civil commotion, weather conditions, accidents of all kinds, etc. The Scope of such Insurance shall be adequate to cover the Replacement/ Reinstallation Cost of the Equipment/materials for all risks up to and including delivery of Goods and other Costs till the Equipment/materials is delivered at Site. The Insurance policies to be taken should be on replacement value basis and/or incorporating escalation Clause. Notwithstanding the extent of Insurance cover and the amount of Claim available from the underwriters, the Contractor shall be liable to make good the full replacement/ rectification value of all Equipment/Materials and to ensure their availability as per Project requirements.

37.4 All Costs on account of Insurance liabilities covered under the Contract will be on Contactor's account and will be included in Contract Price. However, the Employer may from time to time, during the pendency of the Contract, asks the Contractor in writing to limit the Insurance coverage, risks and in such a case, the Parties to the Contract will agree for a mutual settlement, for reduction in Contract Price to the extent of reduced Premium amount. The Contractor, while arranging the Insurance shall ensure to obtain all discounts

on Premium that may be available for higher Value or for reason of financing arrangement of the Project.

38. JURISDICTION OF COURT IN CASE OF DISPUTE OR DIFFERENCES ARISING ON ACCOUNT OF THIS TENDER.

38.1 The Contract, shall in all respects be constructed and governed according to Indian Laws.

38.2 Any suit or application, arising out of any dispute or differences on account of this Tender, shall be filed in a competent court at Bengaluru only and no other court or Forum or Tribunal shall, have any jurisdiction in the matter.

39. PENALTY FOR OFFERING ILLEGAL GRATIFICATION TO BMRCL EMPLOYEES.

If the Contractor or any of his servants or agents, directly or indirectly gives promise or offers any bribe, gratuity, gift, loan, perquisite, reward or employment of BMRCL or in any other way directly or indirectly tries to influence the action of such an employee, in any way relating to his office or employment, the Contract shall be liable to be rescinded. In the event of the Contract being rescinded, the Performance Security deposit of the Contract shall stand forfeited to BMRCL and further the work remaining unexecuted shall be carried out at the cost and risk of the Contractor. Such Contractor will be blacklisted and will not be permitted to participate in any future Tenders of BMRCL.

40 BREACH OF THE PART OF BMRCL NOT TO AFFECT THE CONTRACT.

Breach or Non observance of any of the conditions or terms of the Contract by **BMRCL**, shall not entitle the Contractor to rescind the Contract, but he shall only be entitled to claim damages for loss incurred by him in accordance with law.

41. LAW AND LANGUAGE.

The Contract shall be governed by the Acts and Laws of India, the rules, regulations and bye-laws of the concerned public bodies and authorities. Language of the Contract shall be English.

42 CORRUPT OR FRAUDULENT PRACTICES.

42.1 The Employer requires that the Tenderers / Suppliers / Contractors under this Contract, observe the highest standard of ethics during the procurement and execution of this Contract. In pursuance of this policy the Employer:

a) Defines, for the purpose of these provisions, the items set forth below as follows:

i. “Corrupt Practice” means the offering, giving, receiving or soliciting of anything of value to influence the action of a public official in the procurement process or in Contract execution; and

ii. "Fraudulent practice" means a misrepresentation of facts in order to influence a procurement process or the execution of a Contract to the detriment of the Employer, and includes collusive practice among Tenderers (prior to or after Tender submission) designed to establish Tender prices at artificial non-competitive levels and to deprive the Employer of the benefits of free and open competition.

b) Will reject a proposal for award of work if he determines that the Tenderer Recommended for award has engaged in corrupt or fraudulent practices in competing for the Contract in question.

c) Will declare a Tenderer ineligible, either indefinitely or for a stated period of time to be awarded a Contract/ Contracts if he at any time determines that the Tenderer has engaged in corrupt and fraudulent practices in competing for, or in executing, the Contract.

42.2 BMRCL and each Tenderer submitting the Proposal shall comply with these conditions of Tender and in their dealings with each other, discharge their duties and obligations on time and with integrity and behave equitably, honestly and transparently.

43. Settlement of disputes:

43.1 Any dispute(s) or difference(s) arising out of or in connection with the Contract shall, to the extent possible, be settled amicably between the Parties.

43.2 If any dispute or difference of any kind whatsoever shall arise between the BMRCL and the Contractor, arising out of the Contract for the Performance of the Works whether during the progress of the Works or after its Completion or whether before or after the termination, abandonment or breach of the Contract, it shall, in the first place, be referred to and settled by the Engineer, within a period of thirty (30) days after being requested by either Party to do so, shall give written Notice of his decision to the BMRCL and the Contractor.

43.3 Save as hereinafter provided, such decision in respect of every matter so referred shall be final and binding upon the Parties until the Completion of the Works and shall forthwith be given effect to by the Contractor who shall proceed with the Works with all due diligence.

43.4 During settlement of disputes and Court Proceedings, both Parties shall be obliged to carryout their respective obligations under the Contract.

43.5 **Reconciliation of Accounts:**

The Contractor shall prepare and submit every month, a statement covering Payments Claimed and the Payments received vis-a-vis the Works executed, for reconciliation of Accounts with the BMRCL.

44.INSPECTION, TESTING & INSPECTION CERTIFICATE

44.1 The BMRCL, his duly authorized representative and/or outside inspection agency acting on behalf of the BMRCL shall have at all reasonable times free access to the contractor's / supplier's premises or works and shall have the power at all reasonable times to inspect and examine the materials and workmanship at the works during its manufacture or erection. If part of the works is being manufactured or assembled at other premises or works, the contractor shall from the BMRCL or his duly authorized representative permission to inspect as if the works were manufactured or assembled on the contractors own premises or works inspection may be made at any stage of manufacture, dispatch or at site at the option of the BMRCL and the, equipment if found unsatisfactory due to bad workmanship or quality, Material is liable to be rejected.

44.2 All equipments /materials being supplied shall conform to type tests and shall be subject to routine tests in accordance with requirements stipulated under respective sections. The contractor shall intimate the BMRCL the detailed program about the test at least 10 days in advance in case of domestic supplies & 20 days in advance in case of foreign supplies.

44.3 The successful tenderer shall give the inspection call letter in advance before 10 days from the schedule date of inspection to the Chief Engineer (Utility Shifting), BMRCL for inspection, which include date and place at which the material will be ready for inspection. After inspection of the material and conformity with the relevant standards, necessary dispatch instructions / MFC will be issued by the Chief Engineer (Utility Shifting), BMRCL.

44.4 The Employer or his Representative shall have the right to inspect and/or to Test the Goods to confirm their conformity to the Contract. The Employer will depute Two Engineers from BMRCL for inspecting the equipments/materials. The Inspection and Tests shall be conducted free of cost. For BMRCL representatives deputed for inspection and tests, the Contractor shall bear all the costs towards Travel expenses. The Special Conditions of Contract and/or the Technical Specifications shall specify the Inspections and Tests the Employer requires to be done and the place where they are to be conducted. The Employer shall notify the Supplier/Contractor in writing on the identity of any Representatives authorized for these purposes

44.5 The Inspection and Tests may be conducted on premises of the Supplier/Contractor or its Sub-Contractor at point of delivery and/or at the Goods final destination. When conducted on the premises of the supplier/ contractor/ its sub-contractor all reasonable facilities and assistance including

access to drawings and production data shall be furnished to the inspectors at no charge to the Employer.

44.6 Should any inspected or Tested Goods fail to conform to the Specifications, the BMRCL may reject them and the Supplier / Contractor shall either replace the rejected Goods or make all alterations necessary to meet Specification requirements free of Cost to the BMRCL.

44.7 The BMRCL reserves the right to inspect, Test and, where necessary, reject the Goods after the arrival of the Goods shall in no way be limited or waived for the reason that the Goods have been previously inspected, Tested and passed by the BMRCL or his Representative prior to/after the transportation of Goods.

44.8 TYPE TESTS:

Type tested equipments / materials shall be offered. Refer respective clauses for validity period of various equipments / materials. The type test reports shall not be older than the validity period of respective equipment as on the last date of submission of bid.

a) For Equipments / materials manufactured in India:

i. The type tests on indigenous equipment for which testing facility is available in India, should have been conducted in any independent laboratories approved by the Government or the laboratories accredited by the National accreditation body of the country like Central Power Research Institute (CPRI), Electrical Research and Development Association (ERDA), etc.

ii. The type tests on indigenous equipment, for which testing facility is not available in India, should have been conducted in a laboratory of foreign country accredited by National accreditation body of that country.

iii. The type tests conducted in-house by a manufacturer shall also be acceptable provided the laboratory is accredited by National accreditation body of the country and the tests has been conducted in the presence of a representative of NABL accredited laboratory or any of the purchasing utilities or CEA in that order. Such type test reports shall record the details of such witness including the signature/authentication in the type test report.

b) For Equipments / materials manufactured Abroad:

i. Type tests on imported equipment should have been conducted in an Indian Laboratory or foreign laboratory accredited by National accreditation body of the country where the Type test has been conducted.

ii. The type tests conducted in-house by a manufacturer shall also be acceptable provided the laboratory is accredited by National accreditation body of the country and the tests has been conducted in the presence of a representative of accredited laboratory or any of the purchasing utilities or CEA in that order. Such type test reports shall record the details of such witness including the signature/authentication in the type test report. In case of in-house type tested imported equipment of foreign OEM, the term “Purchasing Utility” covers the foreign Utility who has purchased that equipment.

44.9 The contractor shall give the Employer / inspector ten (10) days written notice of any material being ready for testing. Such tests shall be to the contractor's account including the expenses of the Inspector. The employer/ inspector, unless witnessing of the tests is virtually waived, will attend such tests within ten (10) days of the date of which the equipment is notified as being ready for test/ inspection, failing which the contractor may proceed with the test which shall be deemed to have been made in the Employer's/ inspector's presence and he shall forthwith onward to the Employer/ inspector duly certified copies of tests in triplicate.

44.10 The Employer or inspector shall, within fifteen(15) days from the date of inspection as defined herein give notice in writing to the contractor, of any objection to any drawings and all or any equipment an workmanship which in his opinion is not in accordance with the contract. The contractor shall give due consideration to such objections and shall either made the modifications that may be necessary to meet the said objections or shall confirm in writing to the employer/ inspector giving reasons therein, that no modifications are necessary to comply with the contract.

44.11 When the factory tests have been completed at the Contractor's or Sub-Contractor's works, the, employer/ inspector shall issue a certificate to this effect within fifteen (15) days after completion of tests but if the tests are not witnessed by the employer/ inspector, the certificate shall be issued within fifteen (125) days of receipt of contractor's test certificate by the Engineer-in-charge/ inspector. Failure of the employer/ inspector to issue such a certificate shall not prevent the contractor from proceeding with the works. The completion of these tests or the issue of the certificate shall not bind the employer to accept the equipment should, it, on further tests after erection, be found not to comply with the contract. The equipment shall be dispatched to site only after approval of test reports and issuance of delivery advise / MFC by the employer.

44.12 In all cases where the contract provides for tests whether at the premises or at the works of the contractor or of any sub-contractor, the contractor except where otherwise specified shall provide free of charge such items as labor, materials, electricity, fuel, water, stores, apparatus and instruments as may be reasonably demanded by the employer/inspector or his authorized representative to carry out effectively such tests of the equipment in accordance with the contract and shall give facilities to the employer/ inspector or to his authorized representative to accomplish testing.

44.13 The inspection by Employer and issue of inspection certificate thereon shall in no way limit the liabilities and responsibilities of the contractor in respect of the agreed quality assurance program forming a part of the contract.

44.14 The Employer will have the right of having at his own expenses any other test(s) of reasonable nature carried out at contractor's premises or at site or in any other place in addition of aforesaid type and routine tests, to satisfy that the material comply with the specification.

44.15 The Employer reserves the right for getting any field tests not specified in respective sections of the technical specification conducted on the completely assembled equipment at site. The testing equipments for these tests shall be provided by the Employer.

45. TESTS

45.1 Charging

On completion of erection of the equipment and before charging, each item of the equipment shall be thoroughly cleaned and then inspected jointly by the Employer and the contractor for correctness and completeness of installation and acceptability for charging, leading to initial pre-commissioning tests at Site. The list of pre-commissioning tests to be performed are given in respective chapters and shall be included in the Contractor's quality assurance program.

45.2 Commissioning Tests

45.2.1 The available Instrumentation and control equipment will be used during such tests and the Employer will calibrate, all such measuring equipment and devices as far as practicable. However, immeasurable parameters shall be taken into account in a reasonable manner by the Employer for the requirement of these tests. The tests will be conducted at the specified load points and as near the specified cycle condition as practicable. The Employer will apply proper corrections in calculation, to take into account conditions which do not correspond to the specified conditions.

45.2.2 Any special equipment, tools and tackles required for the successful completion of the Commissioning Tests shall be provided by the Contractor, free of cost.

45.2.3 The specific test to be conducted on equipment have been brought out in the respective chapters of the technical specification.

45.3 The contractor shall be responsible for obtaining statutory clearances from the concerned authorities for commissioning the equipment and the switchyard. However necessary fee shall be reimbursed by Employer on production of requisite documents.

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